



Quiz

Family Provision in Deceased's Estate

Leary v NSW Trustee and Guardian [2017] NSWSC 111

1. At [60] of *Leary v NSW Trustee and Guardian* [2017] NSWSC 111, Ward CJ in Eq, thought it surely cannot be the case that the legislature contemplated (when appointing the time of the making of an order for family provision as the time at which adequacy of provision is to be assessed):
 - a. That someone who had held substantial assets (which, if retained, might lead to the conclusion that there had been adequate provision made for him or her) could by his or her own deliberate conduct divest those assets in the weeks leading up to a hearing so as to improve (or establish) an argument as to inadequacy of provision.
 - b. That someone who had held substantial assets (which, if retained, might lead to the conclusion that there had been adequate provision made for him or her) could not by his or her own deliberate conduct divest those assets in the weeks leading up to a hearing so as to improve (or establish) an argument as to inadequacy of provision.
 - c. It is satisfactory for a plaintiff to gamble away their assets in the lead up to a family provision hearing if it improves their prospects.

- d. Plaintiffs must include a lot of material about their family relationships, dynamics, and historical background in any affidavits filed in Court.
- 2. Evidence quantifying the provision a Court might make for a plaintiff involves looking at:
 - a. The plaintiff's circumstances
 - b. The circumstances of the estate
 - c. The circumstances of the other beneficiary/beneficiaries
 - d. All of the above.
- 3. There was evidence adduced in *Leary v NSW Trustee and Guardian* [2017] NSWSC 111 that the plaintiff had:
 - a. Gambled away around \$200,000 in the 3 weeks before the hearing
 - b. Kidnapped his daughter overseas and demanded a ransom for her return
 - c. Misled the Court and his legal representatives about his financial position
 - d. All of the above.
- 4. An executor defendant is virtually indemnified for their reasonable costs unless:
 - a. There is no appearance by the cross-defendant.
 - b. The matter is heard in the Local Court.
 - c. They do something incredibly ridiculous.
 - d. It is an ex-parte hearing.
- 5. What were the effect of the orders contained in the costs judgment (*Leary v NSW Trustee and Guardian (No 2)* [2017] NSWSC 1226) on the plaintiff?
 - a. The plaintiff was ordered to bear his own costs and pay the defendant's costs on an indemnity basis up to and including the day he filed his affidavit outlining his (allegedly) true financial situation.

- b. Orders in accordance with the Calderbank letter sent by the defendant on the fourth day of the hearing.
- c. Each party to bear their own costs.
- d. No order as to costs was made.

Answers:

1. b 2. d 3. d 4. c 5. a